Western Paper Products, Inc. d/b/a Specialty Envelope Company, Samuel L. Peters, Receiver, and its successor, Specialty Envelope, Inc. *and* United Paper Workers International Union, AFL–CIO and its Local 459. Cases 9–CA–29283, 9–CA–29552, 9–CA–29703, 9–CA–29829, and 9–CA–30136

November 23, 1993

ORDER REMANDING PROCEEDING

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On June 22, 1993, Administrative Law Judge Peter E. Donnelly issued his decision in this proceeding. The General Counsel filed exceptions and a supporting brief, the Charging Party filed cross-exceptions and a supporting brief, the Respondents filed exceptions and a supporting brief, the General Counsel and the Respondents filed answering briefs, and the Respondents filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to remand the proceeding to the judge.

The charges and an ensuing series of complaints in this case allege that a variety of unfair labor practices were committed by Western Paper Products, Inc. d/b/a Specialty Envelope Company (Western); by Samuel L. Peters, Receiver for Western; and by Specialty Envelope, Inc. (Specialty Envelope). The five complaints that issued in this case prior to the hearing allege that unlawful acts committed by Peters during the receivership were attributable to Western because Peters was Western's agent.

At the hearing, the General Counsel moved to amend the complaint to allege, in the alternative, that Peters, in his capacity as Receiver for Western, was an employer within the meaning of the Act. The Respondents objected to the amendment. The judge denied the motion, holding that (1) it was inappropriate to allege in the alternative that Peters was an agent of Western and/or an employer as the Receiver; (2) it was untimely to name a new employer which allegedly violated the Act; and (3) the additional allegations were not closely related to the charge. The General Counsel and the Charging Party filed exceptions to the judge's failure to allow the amendment to the complaint. We find merit in their exceptions for the reasons that follow.[1]

First, we are not troubled by pleading in the alternative as a general rule. Here the amendment was prompted by precedent indicating that the Board will not find a receiver appointed under state law to be an agent of the business entity it is managing. *Cone-Heiden Corp.*, 305 NLRB 1045 (1991). Accordingly, although the motion to amend the complaint provides alternative bases for liability, it is clear to all concerned that the Receiver's alleged statutory status as an employer is likely to be the primary theory of liability.

Second, although the judge is correctly concerned about naming a new party to the complaint at a late stage of the proceeding, the usual grounds for concern are not present in this case. The charges and all of the prior complaints alleged Peters' actions during the receivership to be unlawful; Peters, as the Receiver, was served with the charges and earlier complaints; and ''Samuel Peters, Receiver'' has appeared in the caption of all previous complaints. Accordingly, the Respondents were on notice from the inception of the case that certain actions during the receivership were at issue. The Receiver's due-process rights, therefore, are not infringed by allowing the amendment. This case is most closely analogous to one where the wrong employer is named in the complaint, but there is actual notice to the correct alleged wrongdoer. The Board will allow the addition of parties who are on notice of a proceeding and are not prejudiced by an amendment to include them. See, e.g., *American Geriatric Enterprises*, 235 NLRB 1532, 1534–1536 (1978).

Third, we find the judge's concern that the amendment is not closely related to the charge to be without merit in the circumstances of this case. The amendment concerns the entity which committed the alleged unlawful actions that are enumerated in the charges and the previous complaints. The facts and legal issues to be decided remain the same.[2] Although the Board will not join a new party to a proceeding simply because the issues are closely related, we find, as set forth above, that the Receiver was on notice from the charges and complaints of the allegations of its wrongdoing.

Accordingly, we grant the General Counsel's motion to amend the complaint and shall remand the case to the judge to consider any and all issues raised by the amendment.[3]

ORDER

It is ordered that this proceeding is remanded to Administrative Law Judge Peter E. Donnelly for further

[1] We do not pass on any of the judge's other rulings, findings, or conclusions, nor on the parties' exceptions thereto.

[2] The only additional issue presented will be the Receiver's status as an employer.

[3] The parties are entitled to present evidence regarding the Receiver's alleged status as an employer. Thus, the Respondents may present evidence in support of their argument that the Receiver is exempt from jurisdiction of the Act as a political subdivision of a State. See *Holiday Inn Coliseum*, 300 NLRB 631 (1990). The parties may also present any evidence they were precluded from presenting in the prior proceeding because the Receiver was not named as an employer. The judge may accept any other evidence necessary to accomplish the purposes of this remand.

consideration consistent with the above instructions, including reopening the record to adduce further evidence on the Receiver's alleged status as a statutory employer and its alleged liability for actions taken during the receivership.

IT IS FURTHER ORDERED that Judge Donnelly shall prepare and serve on the parties a supplemental decision containing findings of fact, conclusions of law, and recommendations regarding the issue on remand. Following service of the decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations, Series 8, shall be applicable.

Donald A. Becher, Esq. and *Mary Elizabeth Walker-McBride, Esq.*, for the General Counsel.
David K. Montgomery, Esq., of Cincinnati, Ohio, for the Respondent.
Peter M. Fox, Esq., of Cincinnati, Ohio, for the Union.

DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge. On the various dates set forth there, charges were filed by United Paper Workers International Union, AFL–CIO, and its Local 459 (Union or Charging Party), against Western Paper Products, Inc. d/b/a Speciality Envelope Company, Samuel L. Peters, Receiver (Western) and Specialty Envelope, Inc. (Specialty). Several complaints based on the allegations of the various charges against both Respondents were consolidated into an order consolidating cases, fourth consolidated complaint and order rescheduling hearing which issued on December 22, 1992. That complaint alleges, inter alia, that Western violated Section 8(a)(1) of the Act by promising to provide employees with improved medical and insurance benefits if they withdrew their support for the Union. The complaint also alleges 8(a)(5) violations by Western in refusing to furnish information to the Union necessary and relevant to its duties as collective-bargaining representative of Western's production and maintenance employees; by making various unilateral changes in the terms and conditions of employment of those employees without notice to or consultation with the Union; and refusing to discuss, on request, the matter of Western going into receivership, as it affected the terms and conditions of employment of unit employees.

With respect to Specialty, alleged as a successor to Western, the complaint alleges 8(a)(5) violations by: the failure of Specialty to furnish certain information necessary and relevant to the Union's duties as collective-bargaining representative of the unit employees; making various unilateral changes in the terms and conditions of employment of unit employees without notice to or consultation with the Union; by its overall conduct in refusing to bargain in good faith with the Union and by withdrawing recognition from the Union.[1] Answers to the various complaints have been timely filed. Pursuant to notice, a hearing was held before me on March 2 and 3, 1993. Briefs have been timely filed by Respondent, General Counsel, and Charging Party, which have been considered.

FINDINGS OF FACT

I. EMPLOYER'S BUSINESS

Western was a manufacturer of commercial envelopes with a production facility at Cincinnati, Ohio. During the 12 months immediately preceding June 25, 1992, it sold and shipped from that facility goods valued in excess of $50,000 directly to points outside the State of Ohio. Based on these jurisdictional facts, which are admitted in the answer, I conclude that Respondent Western is an Employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The parties stipulated at the hearing that Specialty, since beginning operations, has sold $50,000 worth of goods across state lines from the Cincinnati facility and is engaged in commerce within the meaning of the National Labor Relations Act.

II. LABOR ORGANIZATION

The complaint alleges and the record here establishes that the Union is an employee organization dealing with employers concerning terms and conditions of employment and is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

About June 1988, Western bought an envelope manufacturing facility located at Cincinnati, Ohio. At that time, the employees of Western were represented by the Union and Western agreed to honor the then-existing collective-bargaining agreement with the Union. Subsequently, a new contract was negotiated effective December 10, 1990, through November 20, 1993.

For some time prior to the execution of the 1990 contract, Western had been experiencing financial difficulty. During 1991, the production staff was reduced from 150 employees to about 70 employees, and during those weeks toward the end of 1991, production was significantly reduced because suppliers were refusing to provide production material to the facility. On January 9, 1992,[2] without the funds to guarantee wages, the employees were sent home to await further developments.

Meanwhile, in view of these dismal economic prospects, Central Trust Company (Central Trust), who was Western's principal lender with a secured interest in the assets of Western, obtained on January, 13, an ''order Appointing Receiver'' from the Court of Common Pleas for Hamilton County. Under the terms of the Order, Samuel L. Peters was appointed Receiver and given control of Western's assets and the day-to-day operation of the business, as well as directions to attempt to sell Western's assets, subject to the approval

[1] The complaint also alleges that Specialty violated Sec. 8(a)(5) of the Act by insisting as a condition of collective bargaining that the Union agree to withdraw the unfair labor practice charges filed by the Union against Western. The General Counsel attempted to adduce testimony thereon, but on motion by Respondent, the General Counsel was precluded from taking such testimony because these conversations were essentially settlement discussions, and testimony inhibiting such discussions are not admissible.

[2] All dates refer to 1992 unless otherwise indicated.

of the court.[3] Also on January 13, the employees returned to work. As set out below in greater detail, the receivership lasted until June 19, when Peters himself purchased the assets of Western.

It is significant to note, and it is undisputed, that prior to the beginning of the receivership on January 13, about November 1991, Western had ceased making certain insurance payments to which it was contractually obligated under its labor agreement with the Union, specifically Employer contributions to the Union's pension fund and insurance premium contributions for health insurance, sickness, and accident disability insurance and life insurance.

On assuming the duties of Receiver on January 13, Peters went to the plant that same day and explained the situation to the employees. He introduced himself as the court-appointed Receiver and introduced Sam Venanzio as the new plant manager. It is undisputed that neither Peters nor Venanzio had any prior involvement in the affairs of Western.

It was stipulated by the parties that during the receivership, Peters declined to honor the existing labor agreement.[4] It is undisputed that contractually obligated insurance and pension payments, earlier discontinued by Western, were not resumed by Western after the appointment of the Receiver on January 13, although Receiver-provided health care coverage was resumed. In addition, the Receiver declined to observe the contract's provisions concerning breaktimes, vacations, and birthdays as paid holidays and instituted his own policies as to those items. The birthday holiday was eliminated. During the receivership, Peters also ignored the job-bidding procedures of the contract, denied plant access to the Union's International representative, as provided in the contract, failed to utilize the recall provisions of the contract in recalling laid-off employees, failed to pay the appropriate higher wage rate provided for in the contract to employees temporarily transferred to a higher wage classification, and failed to pay the appropriate contract wage rate to employees classified as print technicians. Indeed, it was conceded that Peters advised both the Union and the employees that the contract was not a part of the receivership, and the parties stipulated that any changes in working conditions made after January 13 were made without notice to the Union.

Consistent with this position, Peters, during the receivership, did not honor the grievance procedures of the contact. Various grievances filed with the Receiver over the Receiver's failure to observe various contract provisions, including vacations; bumping rights; reimbursement for health insurance premiums and health care costs for the period they were without coverage; union representatives' visitation rights to the plant; failure to make payroll deductions for union dues; payments to the pension fund; and hiring new employees instead of rehiring laid-off employees. All those grievances were rejected with identical memos from Venanzio stating:

> It is my understanding that the contract signed 12/13/90 is not a part of the receivership with Samuel L. Peters.
>
> We are doing everything possible to secure this Company as a profitable organization and are looking for your support and cooperation in this endeavor.

All these changes or modifications to the contract were unilaterally made, without notice to or bargaining with the Union.

During the receivership, the Union, in its capacity as collective-bargaining representative of the unit employees, by letter dated January 15, requested information from the Receiver, concerning the arrangements and documents which brought Western into receivership. Also, by letter dated March 3, the Union requested information relating to the enrollment of employees in Western's health care plan. Peters did not respond, and it is conceded that apart from whatever information it provided during settlement discussions, requests for information were not honored by Western during the receivership.

During the receivership period, in February 1992, an effort was made to decertify the Union. Annalee Turner, an employee, circulated a petition signed by the employees stating that they no longer desired representation by the Union. A decertification petition was filed with the Board on March 5, 1992, and dismissed by the Regional Director because of the pending unfair labor practice allegations and the existing labor agreement. Turner testified that Western's failure to make its contractually obligated contributions for the pension fund and health care premiums had ''quite a lot'' to do with the circulation of the decertification petition. Venanzio testified that he was shown a petition being circulated by Turner, but Turner has no recollection of showing him the petition, and Venanzio was only able to describe its contents in a general way.

As noted above, on June 19, the court approved Peter's purchase of the assets of Western and issued a ''Journal Entry Approving Offer to Purchase Assets, Confirming Sale, Ordering Deed and Distributing Sale Proceeds.'' At this time, a recently established corporation, Specialty Envelope, Inc. replaced Western Paper Products, Inc. d/b/a/ Specialty Envelope Company. Thereafter, all employees were required to fill out new employment applications and were advised on or about June 25 by memo of what their benefits would be as employees of Specialty Envelope, Inc. That memo reads:

Company Benefits
1992

HOLIDAY PAY:
MUST BE FULL TIME EMPLOYEE

MUST BE EMPLOYED 30 DAYS

TO RECEIVE HOLIDAY PAY

MUST WORK DAY BEFORE AND

DAY AFTER TO RECEIVE

HOLIDAY PAY

[3] It appears that Peters had considerable expertise in this type of business as the owner of similar paper products companies.

[4] Peters did not testify.

8 Days Paid:	New Years Memorial Day 4th of July Labor Day Thanksgiving and day after Christmas Eve and Christmas Day
Vacations:	Must be full time employee 1 Week after 1st year employed (see attached) 2 Weeks after 2nd year employed (see attached) 3 Weeks after 10 years employed (see attached) Vacations are not accrued. Vacations must be taken in year earned or it is forfeited. Once termination has occurred no vacation pay is due to the employee. * See attached vacation policy for times vacation must be taken and cutoff date for earned vacation.
Insurance *Disability	Medical (Community Mutual HMP) Must be full time employee Eligible for company insurance 90 days after 1st day of employment. *Disability insurance after 1 year of employment
Birthday	Employees who have perfect attendance with no absences, tardiness, or leave work early for a full calendar year (Jan. 1 thru Dec. 31) will receive their birthday off with pay.
Payroll Deductions:	Benefits offered thru payroll deductions: Credit Union Savings Christmas club Loans IRA—Offered thru 5th 3rd bank 401K Plan
Seniority	Previous service with Western Paper Products, Inc., will be honored for all purposes except bumping in the event of a layoff.

The record also reflects, either by way of stipulation or admission, that, after the purchase, Specialty continued to decline to make payments to the Union's pension fund and continued in effect various changes in working conditions made during the receivership, i.e., job assignments and job bidding procedures, wage rates for unit employees temporarily transferred to work in higher classifications, and workbreaks.

On or about July 21, Specialty also issued a personnel policy announcement stating the number of absences and latenesses that would be considered excessive and ''in violation of the Company's attendance standards.''

After the June 19 sale, the Union continued to request information. By letter dated July 31 to Peters, the Union requested certain information concerning seniority, health insurance, life insurance, sickness and accident benefits, and sale documents related to the purchase by Specialty in contemplation of the possible enrollment of the unit employees into a Union-sponsored health care plan. The letter also asked for data concerning coverage of unit employees under the existing Specialty health care plan. It is conceded that none of this information was provided to the Union and, apart from information produced pursuant to unsuccessful settlement efforts, none of the information requested by the Union since the beginning of the receivership has been provided.

The parties also stipulated that since January 13, Peters, as Receiver, and Specialty have refused either to honor the contract or to recognize and bargain with the Union. It was also stipulated that all the changes made in the terms and conditions of employment, either by Peters during his receivership or made by Specialty, were unilateral, without notice to or consultation with the Union.

B. *Discussion and Analysis*

To briefly review the basic and undisputed facts, Western, after encountering overwhelming financial problems, was forced into receivership by its principal creditor, Central Trust. The court appointed as Western's Receiver, Samuel Peters, a man with substantial industrial expertise in the same line of products. The court ordered Peters to manage the affairs of Western and to attempt to find a purchaser for Western's assets, the proceeds of the sale to satisfy the indebtedness to Central and other Western creditors. On assuming receivership status, Peters announced his intention to purchase Western himself and, subsequently, with court approval, this was done.

In November 1991, Western ceased making payments for health insurance premiums, and, about the same time, ceased making pension contributions on behalf of the unit employees. Both payments were required by the labor contract. Neither was resumed by Peters. After the appointment of Peters as Receiver on January 13, the receivership ended on June 19, when the Court of Common Pleas, Hamilton County, Ohio, approved the sale of Western's assets to Specialty, owned by Peters, by order dated June 19, 1992. During Peters' receivership and under his direction, various unfair labor practices were committed. Indeed, Peters announced his decision not to honor the existing collective-bargaining agreement, instituted various changes in terms and conditions of employment, and refused to discuss the receivership issues with the Union. Beginning on June 19, the Company began operations as Specialty Envelope, Inc. At this time the employees were advised by memoranda of various changes that were being made in their conditions of employment and they were required to make out new employment applications for employment as employees of Specialty. It is undisputed that all the changes in working conditions and terms of employ-

ment, set out above in greater detail, were implemented without notice to or consultation with the Union.

After Specialty began operations, various requests for information and requests to bargain were made by the Union for Specialty's employees. It is undisputed that none of these requests were honored by Specialty.

There can be no doubt that Western, prior to January 13, violated Section 8(a)(5) and Section 8(d) of the Act by failing to make payments for insurance premiums and failing to make payments to the pension fund as required by the existing labor contract, and I so find.

It is next necessary to consider those unfair labor practices occurring during the period of the receivership. The complaint alleges that those unfair labor practices committed by Peters, as Receiver, were assignable to Western since Peters was an agent of Western. Respondent disagrees, and cites the Board decision in *Cone-Heiden*[5] as authority for its position that state court appointed receivers are not agents of the companies they manage. In *Cone-Heiden*, the Board held that a receiver appointed by a state court to temporarily manage the assets of an employer was not an agent of that employer, but was rather a ''fiduciary charged by the Court with managing Cone-Heiden assets for the benefit of Cone-Heiden's creditors'' *Cone-Heiden*, supra at 1 and, as fiduciary for the creditors, it could not also be an agent of Cone-Heiden.

In the instant case, Peters was appointed by an Ohio state court as a receiver with a duty to protect and preserve the assets of Western for its its creditors, principally Central Trust, and to seek a buyer, sell the assets and satisfy insofar as possible Western's financial obligations to Central Trust and thereafter to repay other creditors with any remaining funds. In these circumstances, as in *Cone-Heiden*, I conclude that the Receiver, Peters, was not the agent of Western. Accordingly, I shall recommend that those unfair labor practices alleged to have been committed by Western during the period of Peters' receivership be dismissed.

Next, it is necessary to consider the matter of Specialty as successor to Western. In the instant case, it is undisputed that Specialty ''signed up'' basically the entire Western work force and management as its own employees. It continued to operate from the same facilities and to produce the same products with the same machinery and to service the same customers. In these circumstances, it is clear that Specialty is a successor to Western under criteria established by the Supreme Court in *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987). Thereafter, Specialty, as a successor to Western, was obliged to bargain with the Union as the collective-bargaining representative of its employees. *NLRB v. Burns Security Services*, 406 U.S. 272 (1976).

Having thus concluded that Specialty is a successor to Western, there remains for consideration what obligation, if any, exists on the part of Specialty, as a successor, to remedy the unfair labor practices committed by Western. In *Golden State Bottling Co. v. NLRB*, 414 U.S. 158 (1973), the Supreme Court held that where a purchaser was a bona fide successor under *Burns*, and is aware of the unfair labor practices of its predecessor, it has joint and several liability with the predecessor to remedy those unfair labor practices. The record here makes it clear that that Specialty was fully aware of the outstanding unfair labor practices allegations against Western, particularly bacause Peters, the sole owner of Specialty, had also been Western's Receiver and fully informed of all the pending unfair labor practice allegations from the time the first charge was filed on January 30. Accordingly, in these circumstances, when Specialty acquired ownership of Western's assets, it became, with Western, as successor, jointly and severally liable for remedying those unfair labor practices committed by Western.

Respondent contends that there is no successor relationship between Specialty and Western because there was no business relationship between Western and Specialty at the time of purchase, and such a business relationship is essential to any successor finding. Respondent argues that Western's assets were purchased by Specialty, not from Western, but from an intervening entity, Peters, the state court appointed Receiver, and so there was no business relationship between Specialty and Western. The weakness in this argument is that Western remained, even during the receivership and through the sale, a viable corporate entity and its assets, although sold through the Receiver to Specialty, were still Western's assets, not Peters. To hold otherwise would be to conclude that Peters bought something he already owned. The fact is that Peters, as sole owner of Specialty, purchased all the assets of Western for $1.7 million. There was clearly a business relationship between Specialty and Western.[6]

There remains for consideration the General Counsel's allegations that those unilateral changes made by Specialty as successor to Western violated Section 8(a)(5) of the Act. Under *Burns*, it is clear that a successor corporation has no obligation to assume the labor contract of its predecessor and may normally set initial terms of employment for the work force. However, this principle does not apply in circumstances where the successor retains the same work force as the predecessor. As the Court held in *Burns*:

> Although a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor, there will be instances in which it is perfectly clear that the new employer plans to retain all the employees in the unit and in which it will be appropriate to have him initially consult with the employees' bargaining representative before he fixes terms.[7]

The Board has applied this concept in *U.S. Marine Corp.*, 293 NLRB 669, 671 (1989), observing that:

> Under *Burns*, *supra*, a successor employer is ordinarily free to set initial employment terms, without preliminary bargaining with the incumbent Union. When, however, ''it is perfectly clear that the new employer plans to retain all of the employees in the unit,'' the successor must consult the Union before altering the terms and conditions of employment[8] [footnote omitted].

In the instant case, Specialty, after the purchase from Western, continued the operation basically unchanged and retained Western's employees, simply having them submit new em-

[5] *Cone-Heiden Corp.*, 305 NLRB 1045 (1991).

[6] Respondent's reliance on *Glebe Electric*, 307 NLRB 883 (1992), is misplaced because in *Glebe*, unlike the instant case, there was no purchase and otherwise no evidence of a viable business relationship.

[7] *Burns*, supra at 294, 295.

[8] *U.S. Marine Corp.*, supra at 671, 672.

ployment applications to sign up with Specialty. In these circumstances, Specialty was not free to set initial terms of employment, and with respect to any changes made in the terms and conditions of employment of unit employees after June 19, Specialty was obligated to consult with the Union. Having failed to do so, Specialty violated Section 8(a)(5) of the Act.[9]

Specialty is also alleged to have violated the Act by continuing in effect certain unilateral changes in working conditions initiated during the receivership, as set out above. In agreement with the General Counsel, I conclude that when Specialty either implemented or continued in effect those unilateral changes in working conditions which would have been unlawful at their inception, except that they were committed during the receivership, Specialty violated Section 8(a)(5) of the Act.

As noted above, Specialty was obligated to bargain with the Union as the collective-bargaining representative of its employees. Because the Union thus retained its status as collective-bargaining representative, Specialty was obliged to furnish to the Union whatever information was requested by the Union which was relevant and necessary to the exercise of that responsibility. By failing to provide the Union with the information it requested concerning seniority and health care coverage in its letter dated July 31, 1992, Respondent is refusing to bargain with the Union within the meaning of Section 8(a)(5) of the Act.

In a separate contention, Specialty argues that even assuming that it is a successor to Western, the Union lost its majority status by reason of a petition signed by a majority of the employees in March 1992 indicating that they no longer desired union representation. Specialty argues that even a successor has no obligation to recognize and bargain with a union where it has a good-faith doubt, based on objective considerations, that the Union no longer represents a majority of the unit employees. However, this record, despite the filing of a decertification petition, is totally insufficient to support the conclusion that Specialty had any reasonable basis for concluding that the Union no longer represented a majority of its employees.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondents, as set forth in section III, above, in connection with the Respondents' operations described in section I, above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. REMEDY

With respect to the failure to make contractually obligated insurance payments and pension fund contributions, as noted above, these violations were committed by Western. However, because Specialty was a successor to Western, fully aware of those unfair labor practice allegations, both are jointly and severally liable for compliance with the remedial order.

After the purchase, because Specialty, as noted above, maintained essentially the same work force performing the same functions as Western, Specialty was not free to set its own terms and conditions of employment and is liable for the remedy of the unilateral change unfair labor practices committed after the purchase; refusing to furnish the Union with requested information; and failing to recognize and bargain with the Union. The status quo, for the purpose of remedying the unilateral change unfair labor practices committed by Specialty, shall be the terms and conditions of employment as they existed under Western, including those embodied in the collective-bargaining agreement.

The status quo for remedying those unilateral change unfair labor practices initiated by the Receiver and also alleged as violations by Specialty shall also be the terms and conditions of employment, including the collective-bargaining agreement, as they existed under Western. To hold otherwise where, like here, Peters was both the Receiver and the owner of the successor, would be to allow the successor to profit from its own wrongdoing while acting with impunity as the Receiver. It would be inequitable to allow Peters, as owner of the successor, to enjoy the fruits of the unfair labor practices he committed in his capacity as Receiver, even though as Receiver, he was not accountable for them.

Because the Receiver was not an agent of Western, those unfair labor practices committed during the receivership are not assignable to Western.

All payments owing by Respondent under the terms of this Order shall be with interest and shall be computed in the manner described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and *F. W. Woolworth Co.*, 90 NLRB 289 (1950).

CONCLUSIONS OF LAW

1. Respondent Western Paper Products, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Specialty Envelope, Inc. is a successor to Western Paper Products, Inc., and an employer within the meaning of Section 2(6) and (7) of the Act.

3. United Paper Workers International Union, AFL–CIO, and its Local 459, is a labor organization within the meaning of Section 2(5) of the Act.

4. At all times material, the following described unit has been an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> All regular production, maintenance, shipping and receiving employees, including truckdrivers, at [Western and/or Specialty Envelope's] facility, but excluding office and clerical employees, technical, managerial and professional employees, watchmen, guards and supervisors as defined in the Act.

5. At all times material, the Union has been and is now the exclusive representative of the employees in the above-described bargaining unit for the purposes of collective-bargaining within the meaning of Section 9(a) of the Act.

6. Western and the Union executed a collective-bargaining agreement effective December 10, 1990, through November 20, 1993.

[9] Specific requests to bargain for those employees of Specialty covered by the contract were made by the Union in letters to Peters dated June 23 and July 1.

7. Respondent Western, by failing and refusing to make contractually obligated payments for employee health insurance, sickness and accident disability insurance, and life insurance, violated Section 8(a)(5) and Section 8(d) of the Act.

8. Respondent Western, by failing and refusing to make contractually obligated payments to the pension plan, violated Section 8(a)(5) and Section 8(d) of the Act.

9. Respondent Specialty, by failing and refusing to furnish to the Union information requested by letter dated July 31, 1992, which was necessary and relevant to the Union's performance as collective-bargaining representative of the unit employees, violated Section 8(a)(5) of the Act.

10. Respondent Specialty, by unilaterally eliminating the birthday holidays, paid breaks, and vacation benefits for unit employees, violated Section 8(a)(5) of the Act.

11. Respondent Specialty, by unilaterally changing the job assignments and job-bidding procedures for unit employees, violated Section 8(a)(5) of the Act.

12. Respondent Specialty, by unilaterally changing wage rates for unit employees temporarily transferred to work in higher classifications, violated Section 8(a)(5) of the Act.

13. Respondent Specialty, by unilaterally ceasing to honor unit employees' seniority for purposes of layoff, violated Section 8(a)(5) of the Act.

14. Respondent Specialty, by unilaterally implementing a new disciplinary policy with respect to the attendance of unit employees, violated Section 8(a)(5) of the Act.

15. Respondent Specialty, by refusing to bargain with the Union as the collective-bargaining representative of the unit employees, violated Section 8(a)(5) of the Act.

[Recommended Order omitted from publication.]